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Federal Communications Commission  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	MM Docket No. 92-227
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	RM-8070
FM Broadcast Stations	)	RM-8072
	)	RM-
(Eatonton, Sparta, Fayetteville,	)	
Greenville, Griffin, Hogansville,	)	
Sparta, and Thomaston, Georgia;	)	
and Ashland and Valley, Alabama)	)	

To: Chief, Allocations Branch

**REPLY COMMENTS OF GOOD MEDICINE RADIO, GA, INC.;**  
**DESIGN MEDIA, INC.; and T. WOOD and ASSOCIATES, INC.**

**SUMMARY**

As seen in these reply comments, this controversy should be resolved through utilization of the Wood counterproposal submitted earlier in this proceeding. Through adoption of the Wood counterproposal, both conflicting allotment Options can be adopted.

In the event it is necessary to resolve any of the arguments raised by Orchon in its initial Comments, it should be determined that both the substitution of Channel 249C3, Eatonton, GA for Channel 249A, Sparta, Georgia and the substitution of Channel 248C3, Fayetteville, GA for Channel 249A, Griffin, Georgia are in full accord with Commission rules and policies. Griffin is located outside of any Urbanized Area, and is not interdependent on Atlanta or its facilities. The purported "loss" areas are hypothetical, insofar as sites exist at which the existing Class A facilities can be fully covered, and in any event, the population that would be serviced by new aural reception far exceeds any

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hypothetical population "loss" as may be created. Finally, as seen herein, the benefits as would be created by permitting the allocation of new first local service and new first full-time service to two communities, as well as the improvement of several additional FM facilities, fully justify the reallocation of Channel 249A, Sparta, Georgia, and Channel 249A, Griffin, Georgia.

Finally, in the event a comparison is needed between NPRM Option 1 and Option 2, Option 2 as submitted by DMI and GMR is clearly superior. It will allow for the provision of far greater service gains overall, the substitution of two grandfathered allotments and greater improved service to the public than would Orchon Option 1, and by proposing first local service to Fayetteville, furthers a weightier allotment Priority than would Orchon's proposal.

For all of these reasons, DMI/GMR's proposal for upgrade of their facilities to Class C3 should be adopted.

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**DESIGN MEDIA, INC.; and T. WOOD and ASSOCIATES, INC.**

Good Medicine Radio, GA, Inc. ("GMR"), Design Media, Inc. ("DMI"), and T. Wood and Associates, Inc. ("Wood"), by their attorney, hereby submit their reply comments with respect to this proceeding.

**I. Background**

Wood submitted a counterproposal in this proceeding, supplementing GMR and DMI's original proposal, which offered a means by which the conflict in this proceeding can be eliminated in its entirety.<sup>1</sup> GMR and DMI supported that counterproposal. The only other comments filed in this docket were submitted by Radio Georgia, Inc. ("RGI"), licensee of Station WTGA-FM, Thomaston, Georgia; Perry Communications, Inc. ("Perry"), licensee of Station

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<sup>1</sup> Pearce Broadcasting Associates has consented to the proposed modification of its construction permit. See Attachment 9. Therefore, it will not be necessary for the Commission to issue a Show Cause Order with respect to the proposed change of channels of Station WUAF from Channel 251A to Channel 237A.

WAZS, Ashland, Alabama; and Orchon Broadcasting, Inc. ("Orchon"), permittee of Station WEJG, Greenville, Georgia. RGI supported DMI/GMR's proposal. In its own comments, Perry requested clarification concerning whether the Petitioners had requested and the Commission was considering changing WASZ's authorized channel from Channel 237A to Channel 238A or Channel 266A and, in the event the Channel under consideration is, in fact, Channel 238A, requested that the Commission instead upgrade its allotment at Ashland, Alabama to Channel 238C3. Perry did not directly object to the DMI/GMR proposal. Orchon, in contrast, filed comments supporting its own proposal, and attempted to establish that its proposal to allot Channel 239C3 to Greenville, Georgia is superior to DMI/GMR's proposal to substitute Channel 248C3, Fayetteville, Georgia for Channel 249A, Griffin, Georgia; and Channel 249C3, Eatonton, Georgia, for Channel 249A, Sparta, Georgia.

As seen below, none of the comments warrant the denial of DMI/GMR proposal for upgrade of Station WQUL and WSKS. The public interest overwhelmingly dictates that the DMI/GMR proposal, as modified by the Wood counterproposal, expeditiously should be granted, and the parties be permitted to commence service on the various upgraded and/or superior proposed new channels of operation.

## **II. Perry's Comments**

As noted above, Perry has proposed to substitute Channel 238C3 in lieu of proposed Channel 238A at Ashland, Alabama. Perry claims that the proposed Class C3 upgrade can be accommodated by

"changing one stations [sic] channel and site which has been agreed to, and another applicant agreeing to channel and site change which he has done pending a new site location." Perry Comments at 2.

Perry has supplied no details concerning the proposed channel substitutions (other than its own) or consents as would allow DMI/GMR/Wood to fully analyze and comment upon the "counterproposal." As such, the counterproposal is deficient, and should not become a part of this proceeding at this time. Provincetown, Dennis, Dennis Port, West Yarmouth, and Harwich Port, MA, DA 92-1628 ¶ 10 (Chief, Policy and Rules Div. 1992) (counterproposals must be technically complete when filed; at minimum counterproponent must provide specific transmitter site coordinates and engineering studies); Eatonton and Sandy Springs, GA and Anniston and Lineville, AL, 6 FCC Rcd 6580 ¶ 3 (MMB 1991). The proposed upgrade, however, apparently will consist of a mutually-exclusive adjacent channel upgrade as is permitted under Section 1.420(g)(3) of the Commission's Rules. Thus, at such time as Perry submits the information necessary to allow the public to evaluate its proposal, the Commission will be free to initiate a separate rulemaking proceeding and accept comment on that proposal at that time.

### **III. Orchon's Comments**

Orchon's comments primarily are directed at attempting to establish that Option 1 as contained in the NPRM in this proceeding is somehow superior to Option 2 as propounded by DMI and GMR. Insofar as Wood has submitted a counterproposal which will allow

Option 1 and Option 2 both to be essentially<sup>2</sup> accommodated, Orchon's comparative evaluation of the two proposals is for the most part moot.

Prior to the submission of Wood's counterproposal, Orchon contended that DMI/GMR's proposal to reallocate WSKS from Sparta to Eatonton and WQUL from Griffin to Fayetteville is not in the public interest, arguing that the DMI/GMR proposal does not advance the Commission's allotment priorities insofar as there will be theoretical "loss area" in service by virtue of the adoption of either reallocation (Orchon Comments at 9-10) and that Fayetteville is "practically adjacent to the Atlanta Urbanized Area" and is seeking to be identified with the Atlanta Regional Commission. Orchon Comments at 6-7. Neither of these arguments warrant denial of DMI/GMR's proposal to allocate Channel 249C3 to Eatonton, GA and Channel 248C3 to Fayetteville, GA.

**A. The "Loss" Areas are Purely Hypothetical, and in Any Event, the Public Interest Supports Grant of DMI/GMR's Proposal**

The existence of the alleged "loss area" that Orchon computes does not bar grant of DMI/GMR's proposal. First of all, as seen in the attached Technical Statement (Attachment 1), the total loss area actually is smaller than that claimed by Orchon. Orchon apparently incorrectly based its computations premised upon 6 kW operations of Stations WQUL and WSKS, when in actuality

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<sup>2</sup> The Wood counterproposal will allow the DMI/GMR proposal to be fully adopted (with the sole exception that pursuant to the Wood counterproposal Station WEIZ would operate on Channel 251C3 in lieu of Channel 239A), and will allow Orchon's proposal to be adopted, but with slightly different coordinates that will allow Station WEJG to serve a slightly greater population.

Station WSKS operates at only 3 kW/100 meters and Station WQUL operates at only 3.3 kW/91 meters. Technical Statement at ¶ 9.<sup>3</sup> Moreover, even the actual smaller "loss area" is served by other aural services. Technical Statement at ¶ 9 n.3 & 4. Thus, unlike the circumstances presented in cases such as KTVO, Inc., 57 R.R.2d 648 (1984), where a hearing was required when the Commission was faced with an application that was proposing to allow an existing station to abandon "white areas," the persons within the "loss areas" will continue to be served by other, existing, radio service.

Additionally, as also seen in the attached Technical Statement, the "loss area" is only hypothetical. Technical Statement at ¶ 8. Unlike the situation that existed in the case cited by Orchon (Blackville, Branchville, Estill, Georgetown, Kiawah Island, Moncks Corner, and Walterboro, SC, and Richmond Hill, GA, 7 FCC Rcd 6522, ¶ 3 (Chief, Allocations Branch 1992)), where no possible transmitter site existed at which service to the entire 1 mV/m contour of the previous Class A allotment could be provided, transmitter sites will exist from which both the area within the current 1 mV/m contour of Station WSKS, Sparta, Georgia, and the area within the current 1 mV/m contour Station WQUL(FM), Griffin, Georgia can be encompassed, even after Channel 248C3 is allotted to Fayetteville and Channel 249C3 is allotted to Eatonton.

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<sup>3</sup> Although on December 16, 1992, after Orchon filed its comments, Station WSKS and Station WQUL were issued construction permits for increases in power, the power increases have not yet been effectuated.

Technical Statement at Exhibits 1 & 2.<sup>4</sup> The reference points specified in the Petition were theoretical reference points selected for their proximity to the proposed communities of license. Technical Statement at ¶ 8. In the event Orchon (or any other petitioner) has any quarrel with the actual site for which a construction permit is sought after this proceeding is concluded, it will be free to file a petition to deny against that application at that time. Until then, Orchon's concerns are premature.

Finally, even if an actual, certain, loss area existed, the Commission's cases do not in any way impose any sort of "absolute ban" on channel substitutions which implicate a "loss area." Although the Commission stated in Van Wert, OH and Monroeville, IN, 7 FCC Rcd 6519, 6520 ¶ 11 (Chief, Allocations Branch 1992), that the public "has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another," the Commission also stated that if significant public interest benefits result from the provision of a first local service, it will permit the loss of a transmission service to the original community of license. Id. at 6520.

Here, significant benefits clearly exist. Allowing Station WQUL to change its community of license in the manner

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<sup>4</sup> As seen in Exhibit 2, as in the case of Orchon (Orchon Comments at ¶ 5), in the case of Station WSKS the Class C3 station could encompass all but a de minimis portion of the current Class A 1 mV/m contour.



proposed will allow Station WQUL to provide service to 763,700 new persons, and also will allow Station WSKS also to upgrade its operation, thereby allowing the provision of service to 58,956 new persons. Technical Statement at ¶ 10. This "gain" population therefore far exceeds the projected "loss" population. Technical Statement at ¶ 11 ("[t]he hypothetical number of persons who will lose service therefore is less than 3% of the number of persons who will gain service").<sup>5</sup> Additionally, as noted in GMR/DMI's initial Comments, the substitutions the proposal contemplates in order to enable Station WQUL to accomplish its proposed upgrade results in the ability for additional stations (Stations WEIZ and WASZ) to provide improved service to an additional 16,221 persons overall, as well as the negotiated improvement of service by WTGA-FM from its current site.<sup>6</sup> GMR/DMI Petition, Technical Statement at ¶¶ 23-25. Moreover, unlike the situation presented in Blackville, Branchville, Estill, Georgetown, Kiawah Island, Moncks Corner, and Walterboro, SC, and Richmond Hill, GA, 7 FCC Rcd 6522, ¶ 3 (Chief,

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<sup>5</sup> In KTVO, Inc., 54 R.R.2d 1456 (Rev. Bd. 1983), the Review Board examined service gain areas in mitigation of service loss areas. Although the Commission reversed the Board's decision to compare gain and loss area in KTVO, Inc., 57 R.R.2d 648 (1984), it specifically did so because "white areas" were involved, noting the "grave consequences entailed in depriving a population of its only service." Id. at 650 ¶ 4. There are no "white areas" or the like within the hypothetical "loss" areas. Technical Statement at n. 3 & 4. Therefore, the "gains" properly should be considered as potential mitigation of the alleged "losses."

<sup>6</sup> WTGA-FM currently provides 3 kW non-directional service. It will provide 6 kW directional service from its current site upon grant of the Petition. Contrary to Orchon's claim (Orchon Comments at 10 n.7), this will result in a net increase of service by WTGA-FM by 9907 persons. DMI/GMR/Wood Comments, Technical Statement at ¶ 15.

Allocations Branch 1992), where a proposed community change was rejected, here, (1) greater overall gains in service are involved; (2) the former community's "only competitive service" is not being removed insofar as Griffin will continue to be served by two existing stations -- WKEU(AM) and WHIE(AM), both of which operate full time, 24 hours per day;<sup>7</sup> (3) WQUL will continue to exist as a "reception service" to the community of Griffin with at least a 1 mV/m signal (whereas in Blackville, the removed allotment would not continue to provide any service to its former community); and (4) new first local service to a far larger (740 persons vs. 5827 persons) and far more substantial a community (Fayetteville is the County seat of Fayette County) than Kiawah Island, South Carolina is being proposed. Similarly, unlike the situation found in Van Wert, OH and Monroeville, IN, 7 FCC Rcd 6519, 6520 ¶ 11 (Chief, Allocations Branch 1992), where a community change was denied, neither the community's only local nighttime service nor its sole local competitive voice will be removed through the grant of the Station WQUL channel change.

In a similar fashion, the proposed community change from Sparta to Eatonton should be allowed. As in the case of Griffin/Fayetteville, the "loss" area is purely hypothetical. Technical Statement at ¶ 8. Again, unlike Blackville, (1) WSKS will continue to exist as a "reception service" to the community of

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<sup>7</sup> WHIE(AM) operates at night with a power of 83 watts. Thus, regardless of its technical classification, the fact remains that in terms of actual service, Station WHIE(AM) serves Griffin on a full-time basis. Cf. Orchon Comments n.5.

Sparta with at least a 1 mV/m signal (whereas in Blackville, the removed allotment would not continue to provide any service to its former community); (2) new first full-time service to a larger community (Eatonton: population 4737 persons) than the proposed departed community (Sparta: population 1710 persons) is being requested; and (3) new first local service to a far larger (740 persons vs. 4737 persons) and therefore far more substantial a community than Kiawah Island, South Carolina is being proposed. Similarly, unlike the situation found in Van Wert, where removal of service to a community one-seventh the size of the existing allotment community was proposed, the community's only local nighttime service will not be removed through the grant of the Station WSKS channel change, and again, service to a new, larger, community than the existing community is being requested.

Therefore, Commission precedent does not prevent the allotment of Channel 248C3 to Fayetteville, Georgia or Channel 249C3 to Eatonton, GA.

**B. Fayetteville is Outside of the Atlanta Urbanized Area and Therefore is Entitled to a Strong Allotment Preference**

Pursuant to Section 307(b), the provision of a first transmission service to a community such as Fayetteville is entitled to a strong allocation preference.<sup>8</sup> Even though Orchon

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<sup>8</sup> Communities to which no station are licensed are generally presumed to have a greater need for a first local station than communities with existing stations (Pasadena Broadcasting Co. v. FCC, 555 F.2d 1046 (D.C. Cir. 1977)), and new first local service is favored by the Commission over simply allowing additional service to a well-served population by an existing station. See, e.g., Homerville, Lakeland, and Statenville, GA, 6 FCC Rcd 5802, 5804 ¶ 11 (Ass't Chief, Allocations Branch 1991).

concedes that Fayetteville is outside of the Atlanta Urbanized Area, Orchon has asserted that the community of Fayetteville nevertheless should be treated as though it were a part of the Atlanta Urbanized Area since it is "practically adjacent" to the Atlanta Urbanized Area. Orchon Comments at ¶ 10.

That position cannot be accepted. As the Commission clearly stated in Van Wert, OH and Monroeville, IN, 7 FCC Rcd 6519,

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The cases cited by Orchon are not inapposite. Although Orchon concedes that, in the event a conflict existed, this proceeding should be decided based upon the standards established in Revision of FM Assignment Policies and Procedures, 90 F.C.C.2d 88 (1982) (Orchon Comments at ¶ 6), it attempts to invoke Beacon Broadcasting, 2 FCC Rcd 3469 (1987), in arguing that a first service preference should be denied to DMI, despite the fact that Fayetteville has no local station. Orchon Comments at ¶ 15.

Orchon, however, misapplies Beacon. Beacon is an example of a use of the "quiet village" doctrine. Trade, TN and Beech Mountain, NC, 69 R.R.2d 1731, 1732 ¶ 5 (Chief, Allocations Branch 1991); Scranton and Surfside Beach, SC, 3 FCC Rcd 2798 ¶ 4 (Deputy Chief, Policy and Rules Div. 1988). The "quiet village" doctrine does not apply to allocation cases such as the one here. Northwye, Cuba, Waynesville, Lake Ozark and Eldon, MO, 7 FCC Rcd 1449, 1452 ¶ 21 (Chief, Allocations Branch 1992) (the "quiet village" model "has not been extended to situations...involving a comparison of a first local service and an upgrade of an existing station").

In any event, "Fayetteville" is not a "quiet village." It is a community with a substantial, growing population (1980 population: 2715; 1990 population: 5827), it is the County Seat of Fayette County, Georgia, and as seen in Attachment 7, is soon to be the site of two regional hospitals. Attachment 7 at 4. Additionally, unlike a proper "quiet village" case, the two allotments in question are not capable of serving one another's communities. Cf. Scranton and Surfside Beach, SC, 3 FCC Rcd 2798, 2799 ¶ 5 (Deputy Chief, Policy and Rules Div. 1988). Finally, it cannot even be claimed that "Fayetteville" is a "quiet village" of Griffin. The proposed Fayetteville allotment will not provide city-grade service to Griffin.

Accordingly, in the event a comparison between "Option 1" and "Option 2" becomes necessary, Fayetteville is fully entitled to a "first local service" preference over the Orchon proposal to provide upgraded service at Greenville.

6520 ¶ 11 (Chief, Allocations Branch 1992):

We will not presume that a community outside of, but near, an Urbanized Area is not entitled to a first local transmission service preference.

Id. at 6520 ¶ 9. Cf. Orchon Comments ¶ 10. The Commission has never in any of the cases cited by Orchon treated a community as though it were a part of an "urbanized area" which in actuality was situated outside of a designated Urbanized Area. In Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg, and Ft. Lee, VA, 7 FCC Rcd 6309 (Chief, Allocations Branch 1992), Williamsburg was treated as part of the Norfolk-Virginia Beach-Newport News Urbanized Area. As seen in Attachment 2, this was due not to Williamsburg's "proximity" to the Urbanized Area, but its presence as a part of the Urbanized Area. Cf. Orchon Comments ¶ 11. Similarly, in RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990), the community in question (Richmond, California) was indeed a part of the census designated San Francisco-Oakland Urbanized Area. Id. at 3223 ¶ 12. Finally, in Eatonton and Sandy Springs, GA and Anniston and Lineville, AL, 6 FCC Rcd 6580 ¶ 3 (MMB 1991), Sandy Springs was found to be located within the Atlanta Urbanized Area. Id. at ¶ 20.

Here, as established in Attachment 3, Fayetteville has not been deemed to be a part of the Atlanta Urbanized Area by the U.S. Bureau of the Census. The Commission therefore should defer to the expertise of the U.S. Department of Commerce in this regard, and properly analyze the Fayetteville proposal separate and apart from the aural services which exist primarily to provide service to

the City of Atlanta and that are licensed to communities within the Atlanta Urbanized Area.

Moreover, as seen in Attachment 4, Fayetteville is not in any way interdependent on Atlanta, and truly stands alone an independent, self-supporting community deserving of its own transmission service.<sup>9</sup> Fayetteville has its own Mayor, who states as follows:

I am pleased to hear of your plans to move your radio station to the Fayetteville area. As you know, we are one of the largest communities in the State of Georgia without a radio station and your move here would clearly be in the public interest. Though Fayetteville and Fayette County are members of the Atlanta Regional Commission, we are a distinct community of our own, with County and Municipal governments serving the needs of over 70,000 people in the County. Through our membership in the ARC, we are able to participate in those issues affecting the region, while, at the same time, maintaining our own community identity and direction.

\* \* \*

People are moving to Fayette County because of our unique lifestyle and quality of life; both of which we work hard to maintain.

With a hospital and a new library scheduled to be built soon, the number of community events and level of local news is increasing dramatically. A local radio station would provide great benefits to the public by delivering that local news and by participating in our many community events, such as fundraisers, mainstreet festivals and so forth.

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<sup>9</sup> As seen in Attachment 7, Fayetteville has its own Water Department, maintenance vehicles, and Public Works Department. Attachment 7 at 2-3. As seen in Attachment 8, it has its own zoning commission, licensing procedures, Police and Fire Departments, and Voter Registration and Health Departments. Attachment 8.

Attachment 4. See also Attachment 5. The population of Fayette County is growing faster than any other county in the State of Georgia, and Fayetteville and Fayette County are actively seeking the establishment of new business and industry independent of Atlanta.<sup>10</sup> In view of the fact that Atlanta radio stations do not serve the specific public affairs needs of Fayetteville and Fayette County, the establishment of a new radio station in Fayetteville is in the public interest by providing a unique communications outlet to serve Fayetteville businesses and citizens.

The only evidence presented to the Commission suggesting a "reliance" on the part of Fayetteville on Atlanta is the fact Fayette County joined the "Atlanta Regional Development Center" in July 1991. However, as seen in Attachment 6, Orchon reads far too much into that membership. The Regional Development Centers of Georgia were established in 1989 to serve the public interests of the state by promoting and implementing comprehensive regional planning processes. As seen in Attachment 6, Fayette County initially was placed by the state into the McIntosh Trail Regional Development Center, which was then also composed also of Newton, Butts, Spalding, Lamar, Pike and Upson Counties. Attachment 6 at 2. The Atlanta Regional Commission consisted of Fulton County (the county in which Atlanta is located), as well as the surrounding counties of Cobb, Douglas, Gwinnett, DeKalb, Rockdale, Clayton, and

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<sup>10</sup> See, e.g., Attachment 7, which establishes that Fayetteville is slated to be the site of two new regional hospitals. Attachment 7 at 4. Cf. Orchon Comments at ¶ 12 (Fayetteville has "no major public hospital").

Henry. Id. As stated in the Directory of Regional Development Centers:

The RDCs are involved primarily with planning for the development of the area. In that capacity, the RDCs aid member local governments in developing and implementing plans. Through contractual arrangements, the RDC may provide certain services, such as grant writing, reviewing and commenting on applications for federal assistance.

Attachment 6 at 3-4. In each RCD, no one municipality or County can dominate the RCD. Specifically, neither "Atlanta" nor "Fulton County" dominates the "Atlanta RDC." As seen in Attachment 6:

Membership in an RDC is automatic for each municipality and county in the state.

\* \* \*

The board's membership includes the chief elected official of each county and the chief elected official of each municipality. The county board members and municipal board members from the same county elect one member of the board who is a resident (but not an elected or appointed official or employee of the county or municipality) to serve as the 'nonpublic' board member from a county.

\* \* \*

The executive committee must include at least one board member from each county in the region.

Attachment 6 at 3. Moreover, each County is permitted to petition to change RDC's based upon its evaluation of which RDC will best serve its constituent's overall planning needs. O.C.G.A. 50-8-3.

In this case, it was determined that since many of the services and highly-travelled roadways that are used by Fayette County residents are shared with other counties surrounding the City of Atlanta, Fayette County would be best served by engaging in regional planning with the RDC with which those counties are



associated rather than the more rural McIntosh Trail RCD. In so doing, Fayette County is not "dominated" by Atlanta, has not become "a part of" of Atlanta, nor is it subordinating its own separate identity to that of Atlanta or has it even necessary aligned itself with the interests of Atlanta. Rather, in the spirit of cooperation and due to the need for long-term regional planning, it just so happens by virtue of the realities of geography and shared resources, the counties in which both Atlanta and Fayetteville are located both are a part of the same regional development centers. Fayetteville is a community separate and apart from Atlanta and the designated "Atlanta Urbanized Area,"<sup>11</sup> and should be so regarded by the Commission.

**IV. In the Event a Comparison is Needed, DMI/GMR's Proposal Prevails Over the Proposal Submitted by Orchon**

In the event a comparison between the NPRM Options is needed, the DMI/GMR proposal (Option 2) clearly prevails for the reasons stated in GMR/DMI's Comments filed on December 14, 1992.<sup>12</sup>

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<sup>11</sup> See, e.g., Attachment 7 at 3-4 (photographs of Fayetteville business district).

<sup>12</sup> As Orchon implicitly concedes (Orchon Comments ¶ 21), the Commission's action in Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), has no applicability to this case. Both Orchon's construction permit application (File No. BPH-920811ID) and DMI/GMR's Petition were filed prior to the date the new rules adopted in that proceeding took effect. Id. at ¶ 16. Therefore, DMI/GMR's Petition vis a vis Orchon's application is to be processed under the Commission's prior procedures. Id. Under binding, applicable, Commission precedent, the transmitter site specified in Orchon's construction permit application represents a mere site "preference" which DMI/GMR did not have to protect. Andalusia, AL, 49 Fed. Reg. 32201 (Aug. 13, 1984). See also, Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 6 FCC Rcd 7346, 7347 ¶ 5 (1991).

The DMI/GMR proposal will allow for the provision of additional service to over ten times the number of persons as would receive additional service through grant of Orchon's proposal, would eliminate two grandfathered short-spacings, would allow for the provision of improved service by three Class A stations,<sup>13</sup> and would eliminate the mutual-exclusivity between the WSKS/WQUL upgrade proposals (for Sparta and Griffin) and Channel 288A, Bowdon, GA which currently is the subject of a petition for reconsideration in MM Docket No. 90-309.<sup>14</sup> Although Orchon presented a portion of a Greenup analysis<sup>15</sup> as part of its engineering showing (demonstrating that its discounted improved population coverage would be only 5993<sup>16</sup>), no comparable figures are provided for the GMR/DMI proposal. In the absence of such a showing, in the event a comparison between proposals is needed, the Commission properly should consider simply the raw population

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<sup>13</sup> Contrary to Orchon's suggestion (Orchon Comments at ¶ 21), Blackburg and Roanoke, VA and Lewisburg, WV, 7 FCC Rcd 5451 (Chief, Allocations Branch 1992), imposes no restriction on the voluntary reimbursement of expenses to a licensee or permittee for a change in channels. Blackburg simply involved a request for them Commission to order reimbursement to a station that would secure a Class C3 upgrade. Since the upgrade was voluntary, the Commission declined to require reimbursement. A similar request is not at issue here. Conversely, however, based upon the reasoning of the Blackburg case, in the event the Wood counterproposal is adopted, Orchon is not entitled to reimbursement for its Class C3 upgrade from DMI, Wood, or GMR.

<sup>14</sup> See Report and Order, 6 FCC Rcd 4863 (Chief, Allocations Branch 1991), pet. for recon. pending.

<sup>15</sup> Greenup, KY and Athens, OH, 6 FCC Rcd 1493, 1495 ¶ 12 (1991).

<sup>16</sup> Orchon Comments at ¶ 20.

differences between the proposals,<sup>17</sup> and grant GMR/DMI's proposal for that reason, as well.<sup>18</sup>

WHEREFORE, it is respectfully requested that the proposal of Design Media, Inc. and Good Medicine Radio, GA, Inc., for substitution of Channel 249C3, Eatonton, GA for Channel 249A, Sparta, Georgia; substitution of Channel 248C3, Fayetteville, GA for Channel 249A, Griffin, Georgia; substitution of Channel 238A for Channel 237A at Ashland, Georgia; and substitution of Channel 266A for Channel 237A at Thomaston, Georgia; the proposal of Orchon Broadcasting, Inc. for substitution of Channel 239C3 for Channel 239A at Greenville, Georgia (but with reference coordinates 33° 01' 11" N, 84° 46' 06" W); and the counterproposal of T. Wood and Associates, Inc. for substitution of Channel 251C3 for Channel 248A at Hogansville, Georgia and the proposed substitution of Channel 237A for Channel 251A at Valley, Alabama, all be granted. Alternatively, it is respectfully requested that the proposal of Design Media, Inc. and Good Medicine Radio, GA, Inc., for substitution of Channel 249C3, Eatonton, GA for Channel 249A, Sparta, Georgia; substitution of Channel 248C3, Fayetteville, GA

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<sup>17</sup> In Greenup, the Commission stated that when comparing upgrade proposals under priority four, it will first consider simple new differences in the number of persons newly served by each proposal, and that a petitioner will be free to discount the raw population totals in proportion to the number of services available in the proposed service areas. Id. at 1441-42 ¶ 15. No such comparison was presented by Orchon.

<sup>18</sup> Moreover, Orchon's analysis is incorrect, insofar as it fails even to include all pertinent Commission authorizations. For example, the Showing fails to account for the construction permit issued for Channel 223A, Zebulon, Georgia.

for Channel 249A, Griffin, Georgia; substitution of Channel 239A for Channel 248A at Hogansville, Georgia; substitution of Channel 237A for Channel 239A at Greenville, Georgia; substitution of Channel 238A for Channel 237A at Ashland, Georgia; and substitution of Channel 266A for Channel 237A at Thomaston, Georgia, be granted, and the proposal of Orchon Broadcasting, Inc. for substitution of Channel 239C3 for Channel 239A at Greenville, Georgia, be denied.

Respectfully submitted,

GOOD MEDICINE RADIO, GA, INC.

&

DESIGN MEDIA, INC.

&

T. WOOD and ASSOCIATES, INC.

By: 

Dan J. Alpert

Their Attorney

1250 Connecticut Ave., NW  
#700  
Washington, DC 20036  
(202) 637-9158

December 29, 1992

**ATTACHMENT 1**

REPLY COMMENTS  
MM DOCKET #92-227  
DESIGN MEDIA, INC.  
GOOD MEDICINE RADIO, GA, INC.  
T. WOOD AND ASSOCIATES, INC.  
NUMEROUS COMMUNITIES IN THE STATES OF  
GEORGIA AND ALABAMA  
December 1992

Technical Exhibit

TE-1

Bromo Communications, Inc.  
P.O. Box M - 1331 Ocean Boulevard, Suite 201  
St. Simons Island, Georgia 31522  
(912) 638-5608

REPLY COMMENTS  
MM DOCKET #92-227  
DESIGN MEDIA, INC.  
GOOD MEDICINE RADIO, GA, INC.  
T. WOOD AND ASSOCIATES, INC.  
NUMEROUS COMMUNITIES IN THE STATES OF  
GEORGIA AND ALABAMA  
December 1992

TECHNICAL STATEMENT

1. These comments and attached exhibits were prepared jointly on behalf of Design Media, Inc. ("DMI"), licensee of radio station WQUL, Channel 249A, Griffin, Georgia, Good Medicine Radio, GA, Inc. ("GMR"), licensee of station WSKS, Channel 249A, Sparta, Georgia, and T. Wood and Associates, Inc. ("Wood"), permittee of station WEIZ, Channel 248A, Hogansville, Georgia. These reply comments were prepared in response to comments filed in MM Docket #92-227.

BACKGROUND

2. DMI & GMR jointly filed initial comments and Wood filed a counterproposal in the above referenced docket. The counterproposal proposes to substitute Channel 251C3 for Channel 248A at Hogansville, Georgia, and substitute Channel 237A for Channel 251A at Valley, Alabama. Adoption of this counterproposal would also allow for Orchon Broadcasting Company ("Orchon"), permittee of WEJG, Channel 239A,

Greenville, Georgia, to upgrade its facilities to Channel 239C3. <sup>1</sup> The original DMI & GMR requests at Griffin, Fayetteville, Sparta, Eatonton, Thomaston (all Georgia) and Ashland, Alabama, remained unchanged by the counterproposal.

3. The adoption of this counterproposal, in addition to the unaffected portions of the request filed in the original DMI & GMR petition, will enable four Class A to C3 upgrades (Fayetteville, Eatonton, Hogansville and Greenville), an allotment of a first local service (Fayetteville), an allotment of a first full time local service (Eatonton) and improvements to three Class A facilities to six kilowatts (Thomaston, Georgia, and Ashland and Valley, Alabama). Each of the upgrades and improvements has additional public service benefits, by providing expanded service to 965,183 persons over the presently licensed or authorized facilities' population coverage.

#### COMMENTS FILED

4. Aside from the DMI, GMR, and Wood comments, three other parties filed comments. Comments were filed by Orchon, Radio Georgia, Inc. ("RGI"), licensee of WTGA-FM, Channel 237A, Thomaston, Georgia, and Perry Communications, Inc. ("Perry"), licensee of WASZ, Channel 237A, Ashland, Alabama.

1) Ch 239C3 reference coordinates North Latitude 33° 01' 11" and West Longitude 84° 46' 06".



5. Orchon's comments were adverse to the DMI & GMR initial requests, but were filed prior to the Wood counterproposal. Perry's comments raised some points of confusion in the Commission's Notice of Proposed Rule Making ("NPRM") relating to which channel WASZ was actually being ordered and in which community WASZ was located (Thomaston, Georgia, or Ashland, Alabama). RGI's comments reaffirmed its support for the channel change at Thomaston, Georgia. Therefore, no further reply is necessary to RGI's comments.

#### DISCUSSION

6. The Orchon comments objected to the change in Channels at Greenville, as proposed originally by DMI & GMR, and instead supported its own upgrade request. In comparing the DMI/GMR requests to its own upgrade proposals, Orchon noted several issues relating to the DMI/GMR request, specifically that Fayetteville "...is only four kilometers (2.5 miles) from the Atlanta Urbanized Area..." and that the changes proposed for WQUL and WSKS would "...immediately disrupt existing service to a population of 30,318 persons.." (WQUL) and "... 3,342 persons..." (WSKS). Orchon also offered an evaluation of its proposed upgrade using the service index method outlines in the Greenup, Kentucky and Athens, Ohio, 6 FCC Rcd. 1493 (1991), proceeding.

7. In its original Petition, DMI and GMR noted that Fayetteville, Georgia, was not part of the Atlanta Urbanized Area, a point which Orchon does not dispute. The physical